



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

JAN 13 1999

Mr. Marlyn Bruce  
Hilti Inc.  
5400 South 122nd East Ave  
Tulsa, OK 74146

Ref. No. 99-0002

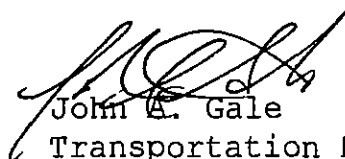
Dear Mr. Bruce:

This is in response to your letter dated December 21, 1998 and subsequent telephone conversation with Diane LaValle, regarding reclassification of a material as a Consumer commodity under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask if a material that is suitable for retail sale can be reclassified as a Consumer commodity even though it is not intended for retail sale.

The answer is yes. The definition of a Consumer commodity in § 171.8 includes materials that are both packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use. Therefore, if the service and supply materials described in your letter qualify for reclassification and are packaged accordingly, they may be described as Consumer commodities, even if not intended for personal or household use.

I hope this satisfies your request.

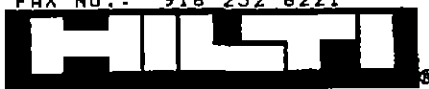
Sincerely,



John A. Gale

Transportation Regulations Specialist  
Office of Hazardous Materials Standards

171.8



Facsimile Cover Sheet

**To:** Mr. Ed Mazzulo  
**Company:** RSPA  
**Phone:**  
**Fax:** 202-366-3012

**From:** Mr. Marilyn Boyce  
**Company:** HILTI, INC.  
**Phone:** 918-252-6207  
**Fax:** 918-252-6221

\* Resent 12-21-98  
**Date:** 12-17-98

**Pages including this  
cover page:** 8

**Comments:** Please review and respond to this enclosed request  
as quickly as possible via return FAX.

**Marilyn Boyce**

*vacation til 1/4/99  
no voice mail  
D-*

*confirmation that materials  
may be reclassified/  
as consumer commodity  
Faxed prev interps (attached)*

*BAT  
§ 171.8  
Consumer  
commodity*

**Class 1 material:**

Safety boosters - proper shipping name is Cartridges, Power Device (refer to enclosed documents and 173.56 (h) ). Typical net contents weights are .243 KG per 100 piece sales unit. Blank cartridges are used for power to insert nails into concrete.

**Class 2 material:**

Cleaner - proper shipping name is Aerosols, Flammable (each not exceeding 1L capacity). Refer to 173.306 (a) (3) and 173.306 (h). Volume is .6 KG per can. This is a cleaner for removing hardened foam residue from the dispenser unit for liquid foam.

Filler foam - proper shipping name is Aerosols, Flammable ( each not exceeding 1L capacity). Refer to 173.306 (a) (3) and 173.306 (h). Volume is .8 KG per can. This is a liquid foam for insulation application in small or hard to reach areas.

**Class 3 material:**

CA 3200/3400 subfloor and general purpose adhesive - proper shipping name is Adhesives. Refer to 173.150 (b) (3) for PG III. Volume is .86 L each tube. This is a construction adhesive ( like liquid nails ) to bond building materials together.

HEA (Hilti Epoxy Anchor) - proper shipping name is Resin Solution. Refer to 173.150 (b) (3) for PG III. Volume is .551 L for the largest size anchor. This product is packaged in a glass ampule (like a test tube within a test tube-completely sealed) and used to adhere steel anchor rods to concrete work surfaces.

HIT ( Hilti Injection Technique) - proper shipping name is Resin Solution. Refer to 173.150 (b) (3) for PG III. Volume is .68 L per cartridge. This product is packaged in a plastic cartridge for dispensing similar to a caulking dispenser. Seismic tested adhesive for solid and hollow base materials.

**Class 8 material:**

HSE 2411 ( High Strength Epoxy) - proper shipping name is Caustic Alkali Liquid, n.o.s. . Refer to 173.154 (b) (1) for PG II. Volume is .3 L per cartridge and the product is dispensed similar to a caulking dispenser. This product is an extended temperature range superior bonding epoxy ( ie. bridges, concrete roadbeds ).

RM-700 (Repair Mortar) - proper shipping name is Caustic Alkali Liquids, n.o.s. . Refer to 173.154 (b) (2) for PG III. Volume is 1.2 L per plastic bucket. This is a mix in the bucket mortar repair kit used on driveways, roadways, warehouse floors and loading docks.

RM-710 ( Low Temperature Repair Mortar) - proper shipping name is Caustic Alkali liquids, n.o.s. . Refer to 173.154 (b) (2) for PG III. Volume is 1.1 L per plastic bucket. This is a mix in the bucket mortar repair

  
U.S. Department  
of Transportation  
Federal Aviation  
Administration

  
PRESIDENT

Western-Pacific Region  
Civil Aviation Security  
Field Office - Honolulu  
Honolulu International Airport  
300 Rodgers Boulevard, #45  
Honolulu, Hawaii 96819  
Telephone: (808) 836-8400

CERTIFIED MAIL

February 4, 1998

Hilti, Inc.  
ATTN: Mr. Gil Morris  
President  
5400 South 122 East Avenue  
Tulsa, Oklahoma 74121

File No. 98WP760057

Dear Mr. Morris:

The Federal Aviation Administration is investigating an allegation that Hilti, Inc. improperly tendered a shipment of dangerous goods to Airborne Express for air transportation from Bellevue, Washington to Honolulu, Hawaii on December 31, 1997. The shipment was tendered on Airborne's air waybill #3840240843 and your reference number 12344063. The shipment was not properly marked and prepared according to Title 49, Code of Federal Regulations (Hazardous Materials).

The shipment contained Cartridges, power device, Class 1.4S. Since the shipment was explosive, the exemption number (EX #) must be included with the paperwork as part of the competent authority and must be marked on the package. The shipper declaration was accompanied by Competent Authority CA-890743 which lists six EX numbers. The shipper declaration did not indicate, nor was the competent authority marked to show, which of the six EX numbers pertained to this particular shipment. In addition, the correct EX number was not marked on the package.

Please provide us with a copy of the hazardous materials training records of those employees involved with the shipment to include packing, preparation and transportation.

We wish to offer you the opportunity to submit a written statement concerning the above allegation. Your statement should contain all pertinent facts and mitigating circumstances which you feel may have a bearing. If we do not hear from you within ten (10) working days following receipt of this letter, the investigation will be concluded upon the basis of information available. If you have any questions, please contact Special Agent Tony Tepedino at (808) 836-8410.

Sincerely,

*Arthur D. Bell*

Arthur D. Bell  
Manager  
Civil Aviation Security  
Field Office - Honolulu

Civil Aviation Security  
Field Office - Honolulu  
Honolulu International Airport  
300 Rodgers Boulevard, #45  
Honolulu, Hawaii 96819

P.O. Box 21148  
Tulsa, OK 74121  
Phone (918) 252-6000  
Fax No. (918) 252-6520

Certified Quality System  
  
ISO 9001 / EN 29001  
Reg. No. 12455-01

ATTN: Mr. Arthur D. Bell

Re: File No. 98WP760057

Dear Mr. Bell:

Attached are the training records you requested for the person(s) responsible for the alleged improper marking and declaration of the Hilti product described as "Cartridges, power device, Class 1.4S, UN 0323". Included are copies of:

- the training records for the individual certifying the shipment (i.e. Neil Duque),
- the training records for the supervisor of the above individual (i.e. Bryan McAden) and
- our hazardous materials training program.

It is our belief that the product "Cartridges, power device" is exempt from the requirements to mark the EX number on the package as well as to identify the respective EX number on the shipper's declaration. This is based upon the following:

- Paragraph 3 of the Certificate of Competent Authority used for this shipment refers to these products as "small arms ammunition".
- Paragraph 4 of the same Certificate of Competent Authority refers to the proper shipping name as "cartridges, power device".
- The IATA Dangerous Goods Regulations, in state variation USG-05, states that, unless excepted by 49 CFR 172.320, EX numbers must be marked on the packaging.
- Paragraph 172.320 excepts those products identified by paragraph 173.56 (h) from the (EX) marking requirements.
- Paragraph 173.56 (h) refers us back to "small arms" cartridges.

Additionally, the manufacturer of the product in question received a verbal interpretation from the Department of Transportation (on April 4, 1995 from Mr. Spencer Watson). Mr. Watson confirmed that "small arms ammunition" and "power devices" do not require EX numbers nor the Certificate of Competent Authority. This is based upon the fact that 49 CFR 107.3 defines "competent authority approval" to include the specific regulations issued in Subchapter C of the Hazardous Materials Regulations; e.g. 172.320 and 173.56 (h).

Even though the regulations exempt us from the requirement to have a Certificate of Competent Authority, our experience with the airlines has been that, if we don't supply the "certificate", they will not accept the shipment.

It certainly was not the intent of Hilti, Inc. to offer a shipment that was not tendered in accordance with the required regulations. It is part of our corporate philosophy to meet or exceed applicable regulations, standards or generally accepted safe practices. If it is the decision of the FAA that our interpretation of the hazardous materials regulations is not correct, please supply directly to me the steps that we must take so that I can follow-up to ensure they are implemented.

Regards,

HILTI, Inc.



S. W. Gerrard, Director  
Quality, Safety and Environmental Management

2. BASIS. This approval is based on the request by Omark Industries of Lewiston, Idaho, dated July 13, 1989.

## COMPETENT AUTHORITY CERTIFICATION CA-890743

PAGE 2

5. U.N. CLASS AND DIVISION (AND COMPATIBILITY GROUP APPLICABLE). 1.4S

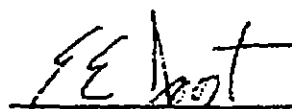
(The shipping name and class assignment are based on Bureau of Explosives and Bureau of Mines Reports on file with the Office of Hazardous Materials Transportation.)

6. PACKAGING.

Packing Instruction 134.

7. EXPIRATION DATE. This approval remains valid until withdrawn or superseded by a revised approval.

Certified by:



Alan I. Roberts  
Director

Office of Hazardous Materials Transportation

JR 26 1989

(DATE)

FROM: WILTI (Distribution)  
5400 South 122 East Avenue  
Tulsa, OK 74121

FAX NO.: 918 252 6221

12-21-98 12:37P P.12

Dear Mr. Morris:

The Federal Aviation Administration has completed its investigation on this file. Based on information provided by your organization, and further investigation along the lines of that information, it has been determined that no violation of the dangerous goods regulations occurred in this particular instance. For that reason, we are hereby closing this case as NO ACTION. If you have any questions, please contact Special Agent Tony Tepedino at (808) 836-8410.

Sincerely,



Arthur D. Bell  
Manager  
Civil Aviation Security  
Field Office - Honolulu